

63 FLRA No. 178

UNITED STATES DEPARTMENT OF THE AIR
FORCE
355TH SPTG/CG
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA
(Respondent)
and
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES
LOCAL 2924
(Charging Party/Union)
DE-CA-06-0349

DECISION AND ORDER

August 13, 2009

Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

I. Statement of the Case

This unfair labor practice case is before the Authority on exceptions to the attached decision of the Chief Administrative Law Judge (Judge) filed by the Respondent. The General Counsel (GC) filed an opposition to the Respondent's exceptions.

The complaint alleges that the Respondent violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (Statute) by bypassing the Union when it delivered a grievance answer to an employee without providing a copy to the designated Union representative and by communicating directly with the employee on the subject of the grievance. The complaint also alleges that the Respondent's conduct interfered with the Union's rights under § 7114(a)(1) to represent unit employees, an independent violation of § 7116(a)(1).

The Judge found that the Respondent violated § 7116(a)(1) and (5) of the Statute, and independently violated § 7116(a)(1), by bypassing the Union when it delivered a grievance answer to the employee and not the designated Union representative.^{1 1}

Upon consideration of the Judge's decision and the entire record, we adopt the Judge's findings, conclu-

sions, and recommended order and notice, and deny the Respondent's exceptions.^{2 2}

II. Order

Pursuant to § 2423.41(c) of the Authority's Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), it is hereby ordered that the United States Department of the Air Force, 355th SPTG/CG, Davis-Monthan Air Force Base, Arizona, shall:

1. Cease and desist from:

(a) Bypassing the American Federation of Government Employees, Local 2924 (Union), the employee's exclusive representative, and dealing directly with unit employees by delivering a grievance answer directly to the grievant without providing the correspondence to the designated representative.

(b) Interfering with the right of employees to designate and rely on the Union to process their grievances through the negotiated grievance procedure.

(c) In any like or related manner, interfering with unit employees rights to designate and rely on the exclusive representative to process their grievances through the negotiated grievance procedure.

2. Take the following affirmative action:

(a) Post at all of its facilities in Davis-Monthan Air Force Base, Arizona, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms they shall be signed by the Base Commander, and shall be, posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin

1. ¹ The Judge also found, contrary to the GC's allegations, that during the disputed meeting, the first-line supervisor provided the employee with the answer to the Step 1 grievance and did not urge the grievant to drop the grievance. Judge's Decision at 8. In these respects, the Judge found that Respondent did not violate the Statute. As no exceptions were filed to these findings, we do not address them further.

2. ² We note that the Respondent relies on an unexcepted-to decision of an Authority administrative law judge. Exceptions at 12-13. In so doing, the Respondent asserts that in *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000), the court ruled that the practice of according unpublished decisions no precedential effect is unconstitutional and that the ruling should apply to unexcepted-to decisions of Authority administrative law judges. *Id.* at 7. We reject the assertion because the decision on which the Respondent relies was vacated. *Anastasoff v. United States*, 235 F.3d 1054 (8th Cir. 2000) (*en banc*).

boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material.

(b) Notify and give the Union the opportunity to be represented whenever any management official or supervisor intends to meet and/or discuss the subject matter or the resolution of any grievance being processed by the exclusive representative of employees under the parties' negotiated grievance procedure.

(c) Pursuant to § 2423.41(e) of the Authority's Regulations, notify the Regional Director, Denver Region, Federal Labor Relations Authority, in writing, within 30 days of the date of this Order, as to what steps have been taken to comply.

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the United States Department of the Air Force, 355th SPTG/CG, Davis-Monthan Air Force Base, Arizona, violated the Federal Service Labor-Management Relations Statute (Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to bargain in good faith with the American Federation of Government Employees, Local 2924 (Union), the exclusive representative of bargaining unit employees, by bypassing the Union and communicating directly with a bargaining unit employee concerning a grievance.

WE WILL NOT fail or refuse to bargain in good faith with the Union by delivering grievance responses and decisions directly to the unit employees without giving copies to the designated representative of our bargaining unit employees.

WE WILL NOT interfere with the right of employees to designate and rely on the Union to process their grievances through the negotiated grievance procedure.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by the Statute.

WE WILL permit the Union, the designated representative of our employees, to attend meetings held to present decisions on grievances to employees represented by the Union.

Respondent

Dated: _____

By: _____

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Denver Regional Office, whose address is: Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver, CO 80204-3581, and whose telephone number is: 303-844-5224.